

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

KENDALL MAGEE

PLAINTIFF

V.

CIVIL ACTION NO.2:16-CV-00172-KS-MTP

SHIRLEY HARRIS, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

THIS MATTER is before the Court on Plaintiff's Motion for Summary Judgment [23], and upon Plaintiff advising the Court that he only wishes to proceed against certain defendants in this case. The undersigned conducted an *Spears*¹ hearing on March 27, 2017, in which Plaintiff addressed the Motion for Summary Judgment [23] and clarified and amended his claims.²

SUMMARY

At the *Spears* hearing the Court informed Plaintiff that in his Motion for Summary Judgment [23] he requested that "his complaint be dismissed with prejudice." See [23] at 5. Plaintiff advised the Court that this was an inadvertent request and asked that the motion be denied. Accordingly, the undersigned recommends the Motion [23] be denied.

Plaintiff at the hearing also advised the Court that he only wished to proceed in this action against Defendants Shirley Harris and Chase Sartin and moved to dismiss the other defendants. Accordingly, the undersigned recommends that the claims against Glenn Allen and Willie McKnight be dismissed.

RECOMMENDATION

Pursuant to Plaintiff's requests and testimony at the *Spears* hearing the undersigned

¹ *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985).

² *See Flores v. Livingston*, 405 Fed App'x 931, 932 (5th Cir. 2010) (stating that allegation made

recommends that Plaintiff's Motion for Summary Judgment [23] be DENIED, and that all claims against Glenn Allen and Willie McKnight be dismissed without prejudice.

RIGHT TO OBJECT

In accordance with the rules and 28 U.S.C. § 636(b)(1), any party within fourteen days after being served a copy of this recommendation, may serve and file written objections to the recommendations, with a copy to the judge, the magistrate judge and the opposing party. The District Judge at the time may accept, reject or modify in whole or part, the recommendations of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court to which the party has not objected. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

This, this the 29th day of March, 2017.

s/ Michael T. Parker
United States Magistrate Judge

at a *Spears* hearing supersede claims alleged in the complaint).